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WASHTENAW COUNTY AND THE BAR

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For anything that may be of interest or value in what follows we are indebted to the painstaking work of the Pioneer Society of Washtenaw County, the Historical Committee appointed by that group in 1880, and to Byron A. Finney and Orlando W. Stephenson, Sr. The work prepared by the first commission and published in 1881 is a complete and painstaking record, minute in detail, supplemented by correspondence, records and diaries of the earliest settlers in the area. The work of Mr. Finney, which includes also a review of the former, carries us, in addition, to the early part of the present century; and Mr. Stephenson's book, entitled Ann Arbor the First Hundred Years, brings us to the year 1927. Mr. Stephenson acknowledged in his introduction the great assistance received from Lucy Chapin, G. Frank Allmendinger, and Titus Hutzel.

The present generation and those who will come after us owe a real debt to these men and women who have made possible so complete a record of the history of our county from its earliest existence, even before it had become a definite legal entity.

Some years prior to 1812, three Frenchmen had established a trading post on the west bank of the Huron River near the present location of Huron and Pearl Streets in Ypsilanti, where a log cabin was constructed and a tract of land known as the four French claims, consisting of about 2000 acres, was acquired by patent. Long before any real settlement was made in the county they pulled up stakes and went out of business. The original residents of the territory, the American Indians, concerning whom Dr. Hinsdale has written many interesting articles, moved on without much ceremony, and the land which is now Washtenaw County was transferred to the United States Government by treaties in 1807, 1811, and 1821. The legal proceedings and formal procedures involved in causing the Indians to seek other habitations further west were very informal, but none the less effective. This of course was all accomplished long before they had an opportunity to learn of the four freedoms. The area now comprising Washtenaw County has been at various times under the domination of the French and English, as well as the United States.

The question of the origin of the name of our county has been a subject for much difference of opinion. Four explanations whose proponents have gone vigorously on record are: (1) "No White People"; (2) Any large stream or river, after an Indian of the same name living at the mouth of the river; (3) Wash-te-nong, or place of Washington, the Great Father; (4) Washtenong, the land

beyond, further-off country.*

Washtenaw County was at one time a part of the Northwest Territory. It was also at one time a part of the State of Ohio, and at another time a part of the State of Indiana. It was even annexed to the County of Wayne. On the 10th of September, 1822, describing the area to be affected, it was proclaimed that this land should form a county to be called the County of Washtenaw, and in the same proclamation it was also provided that until competent authorities should so determine, it would be attached to and compose a part of the County of Wayne.

Prior to 1822, there was not a white settler or trader within the limits of the county as now constituted. The same was still true at the beginning of 1823, but later in the year the early settlers started to come: Woodruff, Brian, Grant, White, Tuttle, Kellogg, Cross, Harwood and others came to the general area of Ypsilanti and Ann Arbor, and from that time on, the immigration was continuous and increasing. A great number of the settlers who came in 1824 were young married people possessing the strength and courage to withstand the hardships of the wilderness and the difficulties of transportation. Finally, with a steadily increasing number of citizens within its borders, it was found possible to organize the area as a county, and in November of 1826 the legislature passed an act, to take effect December 31 of that year, organizing the county. At that time Washtenaw County was divided into three townships, Ypsilanti, Ann Arbor, and Dexter. Later these were subdivided into the townships now constituting our present system. Certain portions of the original area also were cut off, one portion added to Jackson County, another to Livingston County, and still another to Ingham County. The history of the creation of the various townships within the county is an interesting one, but would require too much time to describe in detail. One must be impressed with the zeal, earnestness and patriotism of these early settlers who accomplished much with little.

Samuel W. Dexter, a name familiar to many, was the first County Judge. He was a man of great force of character and apparently of tireless energy. His father at one time was Secretary of State of the United States and Chief Justice of the Supreme Court of the State of Massachusetts.

With the increase in population and the creation of business houses, mills, school, church, and commercial ventures, not to mention the always perplexing question of boundaries and surveys, it became necessary for the peace and welfare of the community to establish a county court.

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*The opinion of present-day anthropologists, expressed by Dr. Emerson F. Greenman, Curator of the Division of Great Lakes, University Museum of Anthropology, strongly favors the last named. The word is unmistakably from a Central Algonquian language, and the literal translation, "distant place," would serve as the equivalent of our homelier phrase, "back country," to the Indians viewing it from the new settlements around Detroit. -Ed.

In addition to Judge Dexter, other lawyers also settled here about the same period. James Kingsley, who later became the first Probate Judge and who, incidentally, was a member of the Legislative Council of the Territory of Michigan, Trustee of the University of Michigan, member at different times of both houses of the State Legislature, Regent of the University, and Mayor of Ann Arbor,- in his spare time practiced law. Others were Elisha Belcher, Gideon Wilcoxen, and Marcus Lane. Consequently, with this nucleus of a group of the distinguished and honorable profession in evidence, in January of 1827 a county court was established by an act of the territorial council and Judge Samuel W. Dexter presided at its first session.

The Judgeship was created and there was no court house, but there was, however, a defendant. One of the local residents, so it is rumored, had been selling liquor without a license. Since history was to record him as the first man in the county to appear before the court for trial, and not wishing to be outdone in the attention which his fellow citizens had bestowed upon him, he graciously offered the use of his home as a court room. In the same spirit (or spirits) in which the invitation was extended, it was promptly accepted and the trial forthwith proceeded with dignity and dispatch. (B. F. H. Witherell was the Prosecuting Attorney and Mr. O. D. Richardson appeared for the defendant.) The outcome, considering the chivalrous conduct of the alleged malefactor, could not long have been in doubt. He was promptly acquitted by the jury and freed once and for all time of the stigma that attached to that particular indiscretion.

The exact wording of the Indictment may be of interest:

Michigan Territory, County Court of the County of Washtenaw.
At the January term in the year of our Lord one thousand eight hundred and twenty-seven, the Grand Jurors of the United States of America, enquiring in and for the body of the county of Washtenaw, aforesaid, upon their oaths present that Erastus Priest, late of the county of Washtenaw, aforesaid, yeoman, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-seven, at Ann Arbor, in the county and Territory aforesaid, and within the jurisdiction of the County Court of the county of Washtenaw, aforesaid, did then and there sell for money, rum and wine by less quantity than one quart; he, the said Erastus Priest, then and there not having a license or permit to keep a tavern, against the peace and dignity of the United States of America, and against the Statute of the Territory of Michigan in such cases made and provided.

B.F.H.Witherell
District Attorney

Some five years or more passed after the first trial before a so-called Regular County Court building was constructed. It was an unpretentious structure but not lacking in simple dignity. It

served its purpose for more than forty years and was then replaced by the present court house. Since you have all seen the present edifice I shall make no effort to describe it, but will take the liberty of quoting one of the writers of 1887, giving you his thumbnail sketch of its appearance:

> The new court house is a handsome structure, 80 by 127 feet in size and the main part 54 feet in height. In the center of the building is a tower* which arises to a height of 152 feet. On each corner of the building is a small tower, between each of which is a figure of justice. A large clock was placed in the tower at a cost of $1000.

On October 25, 1887, the occasion of laying the cornerstone, the city turned out to make the celebration a memorable one. University students marched in the parade with the local citizens and residents of the county. Judge Lawrence, the presiding officer of the day, said that he, having been the overseer of the construction of the foundation walls of the new building, was in a position to state that they were of such a character that, compared with the foundations of ancient buildings abroad, it should stand for five thousand years. This view is still apparently held by the Board of Supervisors, and on that basis it still has 4932 years to go.

In the early court days some of the inhabitants were in the habit of congregating on the court building lawn - others would congregate near the old Post Office then situated on the corner of Ann and Fourth and directly across the street from the court house. In the trial of law suits, differences of opinion would naturally arise as well as controversies on political subjects and even fine distinctions of the relative desirability of living in Lower Town (now the North Side) or on The Hill.

The historian writing of that period said:

> It was in front of this office that many a two-fisted battle was fought; those living on the West side of town waging war against those living on the East; Citizens of Lower Town fighting the haughty inhabitants of "The Hill," and the Irish fighting everyone on general principles.

Since 1842, when the University was in its infancy, the ties between the University and the local community have continued to become stronger year by year. Although the date of the actual establishment of the University was 1837, the Supreme Court of the State has held that the Regents were the direct successors and inheritors of the Act of 1817. In the beginning, Rev. John D. Pierce recommended the ultimate establishment of three departments, one of Literature, Science and the Arts, one of Medicine, and one of Law. As the years have passed, and class has followed class in the work of the Law School, these young men have gone into every part of the

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*This tower was the gift of Luther James, an early citizen.

country and in fact to most of the civilized nations of the earth. Statesmen, legislators, diplomats, judges, and eminent legal scholars from this Law School have made great contributions to the welfare of the country, and to the fame of the University. Young men who attended classes in the Law School and visited our local courts to obtain practical experience from qualified lawyers and judges have returned to their homes, taken up their professions and become important factors in their local communities. Scores of them have become judges of State Courts, as well as Federal Courts through the length of the land. In some of the Western courts a majority of the members of the Supreme Bench at one time had been graduates of the University of Michigan. The Supreme Court of the United States has had its representatives from this school, and still has. They have gone from here later to enter the halls of Congress and the Senate of the United States, and cabinets of the various administrations, and even within the memory of the present group to become candidate for the highest gift in the power of the American people to bestow. The Law School not only turned out trained and cultured men for the profession but has also earned for itself an enviable place in the top ranks of the Law Schools of the country.

The members of the Law faculty have always maintained a close relationship with the State and local Bar associations and a splendid spirit of cooperation has existed between the groups. For many years these faculty members have advised various branches of the State and National administration on matters of policy and procedure, and have given valuable advice and information in the creation of Boards and Commissions. Services of such men as Hutchins, Bates, Sunderland, Knowlton, and Stason were always available to the public officials of this state, and many of the reforms in court procedure and simplification of practice were the result of their efforts.

One of the outstanding figures in our profession was Judge Thomas M. Cooley, who was born in New York in 1824, but in 1843 came to Michigan, where for a time he practiced law at Adrian. After being Circuit Court Commissioner for a time he was appointed official reporter of the Supreme Court of the State of Michigan, and in 1859 accepted the appointment as Jay professor of law in the University of Michigan, and removed to Ann Arbor. Later in 1864 he was elected to the State Supreme Court and from that time until 1885 was a member of that court. His judicial opinions have been received with the highest respect and appreciation by the profession throughout the whole country. Hie work known as "Cooley's Constitutional Limitations," is perhaps one of the most important legal contributions and has done more to educate the legal profession in this country in a knowledge of the principles of government than any other work used by them.

One of the first three Supreme Court Judges in Michigan was Augustus B. Woodward, who owned considerable property in Washtenaw County and who was largely responsible for naming Ypsilanti. Later Judge William A. Fletcher was appointed Judge for this County and held court from 1833 until the territorial courts were superseded by the judicial tribunals organized under the State Constitution.

Judge Fletcher then became the first Chief Justice of the Supreme Court of the State of Michigan and resided in Ann Arbor until the time of his death in 1853. Later Judge Alpheus Felch was appointed to the position formerly held by Judge Fletcher, and he in turn was succeeded by Judge Warner Wing, who never actually resided in the County but retained his home in Monroe. He, in turn, was succeeded by Judge Wing and then followed Judge Miles who died during his term of office, and was succeeded by Judge David Johnson of Jackson. Judge Johnson continued to preside in Washtenaw County until the reorganization of the court under the Constitution of 1850, after which time Judges of the Circuit Court were elected instead of being appointed to the office. Johnson was elected in the first judicial election and he was succeeded by Judge Edwin Lawrence, who served for 12 years. Judge Lawrence and his son, who practiced at the Bar for many years, were well known to the citizens of this city and county. After Judge Lawrence's term he was succeeded by Judge Samuel Higbie, who served until 1874 and resigned in that year. Alexander D. Crane was appointed to fill the vacancy caused by Judge Higbie's resignation, and he was followed by Judge George M. Huntington who had been elected in 1876. In 1882 Chauncey Joslin of Ypsilanti was elected to serve six years and was followed by Judge Edward D. Kinne, who served from 1888 until 1918. He was succeeded at that time by Judge George W. Sample, who served until the time of his death in May of 1945. The vacancy caused by the death of Judge Sample was filled by the appointment by the Governor of James R. Breakey, Jr., who is now serving as Circuit Judge of Washtenaw County. During this long period of time, from the appointment of Judge Woodward to the present, Washtenaw County has numbered among the members of the Bar many distinguished and illustrious men. My personal experience extends only to the latter eleven years of Judge Kinne's term. The old court house and the present structure have witnessed during the years many interesting and important legal contests. Criminal cases, law actions, and chancery actions by the hundreds have passed in procession down through the years. Scores of men have walked out the doors of the court house to leave the society of their fellows, to pay the penalty that the court imposed upon them in sentences varying from a few months to life imprisonment. In the civil cases, in law, and in chancery, litigants through their counsel submitted their conflicting claims and accepted with more or less satisfaction the decisions of the juries and the courts.

The Bar of this County has always made prompt and immediate response to the call of our country in time of war. In the Civil War, the Spanish-American War, World War I, and World War II, the members of our profession, in proportion to their numbers, made full contribution. A very considerable group of our younger lawyers are still attached to the various Air, Naval, and Military organizations throughout the world. Others are with the Judge Advocate General's Department in the various theaters of action in the occupied countries. All have given excellent service and have, in many cases, at considerable sacrifice to themselves, earned the gratitude of their Nation and the respect and admiration of their associates in the legal profession.

I know that I echo the sentiments of the other members of the Bar, the families of the young men, and all other members of our community when I express the earnest hope that they may soon be with us again, with us to take up once more the activities of their normal lives which were interrupted by the war.

Thus far we have considered the efforts of the local Bar Association and the members of the Bar in relation to their work as Judges, officers of the court, and attorneys, before the Supreme Court, the so-called county courts, and the Circuit Courts. There are at least two other types of judicial tribunals that are worthy of attention. The Probate Court is a court having jurisdiction of the estates of deceased persons, incompetents, minors, and in more recent years juvenile delinquents. It is an exceedingly important branch of the judicial system of our state because in and through it the rights of widows, orphans, incompetent people and others are cared for and supervised. Other duties fall to this tribunal also, but the functions above named are the most important. With the work of this court the attorneys are always closely associated, because title to real property, dower rights, inheritances, testamentary dispositions, guardianships and many other matters are in the first instance exclusively in the province of these courts. Bethuel Farrand was the first Probate Judge of Washtenaw County and he was named by appointment. Thereafter the office was filled by election, and among them Wilson, Sedgewick, Fuller, Van Cleave, Granger, Beaks, Cheaver, Harriman, Watkins, Newkirk, Murray, and Leland have served. Judge Pray is the present incumbent and he has held the office for a number of years after some years as county clerk of Washtenaw County.

The records of all the estates are carefully kept and filed in that office and become a part of the permanent records of the office.

To the younger generation of attorneys, as in the years gone by, the local courts known as Justice Courts or Municipal Courts are, in the first instance, arenas of great importance. It is in these courts that invariably they receive their first practical knowledge and experience in the trial of cases. Many of these cases are pretty much the same as the cases tried in courts of record but the jurisdictional amount is lower and the penalties meted out to wrong doers are on the basis of so-called minor infractions of the ordinances or the statutes. In these courts, however, the respondents charged with grave or serious crimes are given an opportunity for a hearing prior to being bound over to the Circuit Court for trial or released for lack of proper cause to believe that an offense has been committed or that the respondent has committed it. At the beginning of this century these minor courts were known as Justice Courts and were usually limited in jurisdiction to amounts involving not more than $300 in certain types of actions and $100 in others. They formed an exceedingly important part of our system of Justice because for every citizen who might have occasion to pursue litigation in the courts of record, 20 would doubtless appear before these Justice Courts. Obviously, to a litigant seeking justice in these courts, their administration

was a matter of very great importance. He formed his estimate of law, order, and justice from the proceedings that were there conducted and the manner in which justice was dispensed. They were operated under a system known as the fee system, whereby the presiding officer depended upon the fees of the various cases before him for his salary or income. This frequently was the cause of considerable criticism and misunderstanding. Efforts were under way for a considerable period of time to eliminate this type of court in the larger areas of population and establish, in place of the Justice Court, a municipal court with broader powers and jurisdiction and dependent not upon fees but upon a fixed salary for the compensation of the judge. In matters of legal reform these steps proceeded slowly but ultimately the Municipal Court was established and has been presided over since its inception by Judge Jay H. Payne, and is now located in the Municipal Court Building at the corner of Main and Huron Streets. The court room is furnished in good taste and with regard for the convenience of the litigants, the jurors who may be called to hear certain cases, witnesses and other persons having business with the court. The proceedings are conducted in a dignified and orderly fashion and the younger members of the Bar and even the veterans are gratified with its great improvement over the former system.

The History of 1881 summarizes as follows:

> The Bar of Washtenaw County has ever been a subject of pride among her citizens. Some of the best legal minds, fairest logicians and finest orators of the age have practiced before her courts, many of whom have claimed a residence in the county. In reviewing the history of the Bar it must be borne in mind that as the prosperity and well being of every community depend upon the wise interpretation, as well as upon the judicious framing of its laws, it must follow that a record of the members of the Bar, to whom these matters are generally relegated, must form no unimportant chapter in the county's history. Upon a few principles of natural justice is erected the whole superstructure of civil law tending to relieve the wants and meet the desires of all alike. Where so many interests and counter-interests are to be protected and adjusted, to the judiciary is presented many interesting and complex problems. But change is everywhere imminent. The laws of yesterday do not meet the wants and necessities of the people of today, for the old relations do not exist. New and satisfactory laws must be established. The discoveries in the arts and sciences, the inventions of new contrivances for labor, the enlargement of industrial pursuits, and the increase and development of commerce are without precedence, and the science of law must keep pace with them all; nay, it must even forecast events and so frame its laws as will adequately subserve the wants and provide for the necessities of the new conditions.

After nearly 40 years of more or less active practice and close association with many fellow members of the Bar, it is not to be wondered at that since I started the preparation of this report memories should come flooding back,- memories of legal battles fought and won and fought and lost, contests lasting days and sometimes weeks or months. Capable and able attorneys, many of whom have passed on but whose personalities and lives have left deep impressions upon the community in which they practiced: King, Sawyer, Lawrence, Knowlton, Brown, Wedemeyer, Duffy, Blum, Griffin, Towner, Waters, Freeman, Bogle, Thompson, Wilgus, Cavanaugh, Kearney, Whitman, Harriman. These and others were active here during the past 50 years, and all in some form or other left many contributions for those of us who still survive and for those to come in future generations, serving to make the county of Washtenaw a better place in which to live, and elevating its ideals of integrity and its respect for the administration of justice within its boundaries.

In the examination of abstracts of title which continually come to the offices of the practicing attorneys in this county appear the names of the earliest settlers, the persons who "took up" land from the government and received patents, among them John Allen and Elisha Walker Rumsey. The name "Ann Arbor" was derived from the first names of the wives of the two just mentioned. Hundreds of abstracts bearing these names as the original grantees have been and will continue to be observed as long as the abstract system continues in force.

To have been permitted to participate in your meeting tonight as a speaker has afforded me a deep sense of personal satisfaction. It has served to renew my recollections of the members of the Bar whose activities have been transferred to the last and final court of judgement. It has served also to refresh and renew my contact and acquaintance with my fellow members who are still engaged in practice. But it has served principally, in reviewing the history of the early pioneers, settlers, and lawmakers of our community, to excite a true sense of humility and appreciation of the loyalty, sincerity, courage, and determination of the generations who are with us no more.

In conclusion I should like to read a brief paragraph taken from the History of Washtenaw County, published in 1881, to which I have made reference before, as indicating not only the qualities that I have just referred to, but also their hope in the future.

> And now, how natural to turn our eyes and thoughts back to the log-cabin days of less than 50 years ago, and contrast it with the elegant mansion of modern times. . . . Within this chinked and mud-daubed cabin, we read the first pages of our history, and as we retire through its low doorway, and note the heavy battened door, its wooden hinges, and its welcoming latch-string, is it strange that the scenes without should seem to be but a dream? The cabin and the mansion, side by side in vivid contrast, tell the story of this people's progress. They are a history and a prophecy in one.

Ann Arbor, Michigan. November 16, 1945